

Attachment 1

ADDENDUM TO APPENDIX B-4 STANDARD TERMS AND CONDITIONS

- **Appendix B-4 is modified to delete Clause 2 and replace it with the following:**

Clause 2. SUBCONTRACT ISSUES AND DISPUTES (SEPT 2007)

(Applies to all subcontracts.)

- A. It is NREL's practice to try to resolve all contractual issues by mutual agreement at the NREL Subcontract Administrator's level, without litigation. Both parties hereby agree to explore all reasonable avenues for negotiations in order to avoid a dispute. Either party may provide written notice to the other party to conduct negotiations for a period not to exceed sixty calendar days. After sixty calendar days, if possibilities for negotiations have failed, either party shall have thirty calendar days to request that the potential dispute be moved to Alternative Dispute Resolution (ADR). Within fifteen calendar days after receiving a request to move to ADR, if ADR procedures are not acceptable to the non-moving party, a written explanation citing specific reasons for rejecting ADR as inappropriate for resolution of the dispute shall be provided to the moving party. If the parties are unable to agree on the application of ADR procedures to resolve the potential dispute or are unable to satisfactorily resolve the dispute using ADR procedures for a period not to exceed ninety calendar days (or such longer period as mutually agreed in writing), the parties shall resume the formal process authorized in this clause.
- B. The parties agree that the appropriate forum for litigation of any dispute pertaining to this subcontract shall be a court of competent jurisdiction as follows:
 - 1. Subject to paragraph (B)(2) of this clause, any such litigation shall be brought and prosecuted exclusively in Federal District Court; with venue in the United States District Court of Colorado in Denver, Colorado.
 - 2. Provided, however, that in the event that the requirements for jurisdiction in any Federal District Court are not present, such litigation shall be brought in a court of competent jurisdiction in the county of Jefferson and State of Colorado.
- C. Any substantive issue of law in such litigation shall be determined in accordance with the body of applicable Federal law relating to the interpretation and application of clauses derived from Federal Acquisition Regulations (FAR) and the Department of Energy Acquisition Regulations that implement and supplement the FAR. If there is no applicable Federal law, the law of the State of Colorado shall apply in the determination of such issues. Conflict of law provisions shall not determine applicable governing law. Nothing in this clause shall grant to the Subcontractor by implication any statutory rights or remedies not expressly set forth in this subcontract.

- D. There shall be no interruption in the prosecution of the work, and the Subcontractor shall proceed diligently with the performance of this subcontract pending final resolution of any contractual issues, disputes, or litigation arising under or related to this subcontract between the parties hereto or between the Subcontractor and lower-tier subcontractors or suppliers.
- E. The Contract Disputes Act of 1978 (41 U.S.C. Sections 601-613) shall not apply to this subcontract; provided, however, that nothing in this clause shall prohibit NREL, in its sole discretion, from sponsoring a dispute of the Subcontractor for resolution under the provision of its prime contract with DOE. In the event that NREL so sponsors a dispute at the request of the Subcontractor, the Subcontractor shall be bound by the decision of the cognizant DOE Contracting Officer to the same extent and in the same manner as NREL.
- F. Any disputes relative to intellectual property matters will be governed by other provisions of this subcontract.

- **Appendix B-4 is modified to delete Clause 3 and replace it with the following:**

**CLAUSE 3 – SECURITY, SAFETY, AND ACCESS REQUIREMENTS FOR
SUBCONTRACT WORK PERFORMED AT NREL OPERATED FACILITIES
(SPECIAL) (JANUARY 2007)**

(Applies to all subcontracts where Subcontractor's employees (or lower-tier subcontractors' employees) and their officers, agents, or other persons representing the Subcontractor will enter onto NREL operated facilities, including Government-owned or-leased property.)

A. Security and safety requirements.

1. NREL has established security and safety requirements to govern access onto NREL operated facilities by the Subcontractor's employees (and its lower-tier subcontractors' employees) and their officers, agents, and any other persons representing the Subcontractor.

The introduction of certain "controlled" commodities and/or activities on the NREL operated facilities is prohibited. Prohibited articles include cameras, copying machines, reproduction devices, recording devices, radio transmitters, firearms, explosive devices, incendiary devices, dangerous weapons or materials, controlled substances (illegal drugs), alcoholic beverages, and livestock. NREL operated facilities and DOE-owned or-leased property is closed to all hunting.

2. As a condition of entry to NREL operated facilities, the Subcontractor agrees to permit NREL Security personnel to search the Subcontractor's employees (and its lower-tier subcontractors' employees) and their officers and agents' vehicles, packages, tool boxes, or other containers for the purpose of preventing prohibited articles to be brought onto NREL operated facilities or to detect or deter the unauthorized removal of Government property from NREL operated facilities.

3. The Subcontractor is solely responsible for the security of the Subcontractor's employees (and its lower-tier subcontractors' employees) and their officers and agents' materials and equipment at the NREL operated facilities. Any security system the Subcontractor may elect to use (fences, keys, alarms, etc.) must be coordinated with the NREL Technical Monitor.
4. The Subcontractor is responsible to advise the NREL Technical Monitor promptly of any non-routine events, occurrences, incidents, accidents, etc., particularly in situations involving lost time accidents and ambulance runs, occurring under this subcontract.
5. NREL Security reserves the right to revoke site access authorization for any person violating NREL or DOE safety and security policies and procedures.

B. Access requirements for U.S. citizens.

1. Access to NREL operated facilities is controlled in accordance with the DOE's security requirements. The Subcontractor shall ensure that any of the Subcontractor's employees (and its lower-tier subcontractors' employees) and their officers and agents who will enter onto the NREL operated facilities are specifically authorized site access under the NREL requirements set forth in the NREL Access Control Policy and Program, including identification, badging, and registration by NREL Security. A two-week advance notice to NREL Security processed through the NREL Subcontract Administrator is required prior to access by U.S. citizens.

C. Access requirements for persons who are not U.S. citizens.

1. The Subcontractor shall ensure that any of the Subcontractor's employees (or its lower-tier subcontractors' employees) and their officers, and agents who will enter onto NREL operated facilities and who are not U.S. citizens meet the requirements set forth in NREL's Foreign National Management Policy and Program, including: (a) appropriate work authorization documentation (i.e. Visa); (b) completion of an NREL Foreign National Data Card; and (c) NREL Manager-level approval.
2. Foreign Nationals from DOE-designated "Sensitive Countries" will be processed for a Federal background check. This process requires a minimum of two weeks. Foreign Nationals from DOE-designated "Terrorist Supporting Countries" will be processed for an extensive Federal background check and DOE Headquarters approval. This process requires a minimum of three months. The Subcontractor should contact the NREL Subcontract Administrator to obtain the most current listing of "Sensitive Countries" and "Terrorist Supporting Countries."

It is the responsibility of the NREL Technical Monitor and the NREL Subcontract Administrator to assure that the Subcontractor provides all documentation and meets all requirements within the appropriate time frames for NREL Security to process and approve the request for access. Any person(s) denied access by NREL Security or DOE

shall not be assigned by the Subcontractor to enter onto or perform subcontract work at NREL operated facilities.

3. Prior to the initiation of subcontract that requires entry onto NREL operated facilities, the Subcontractor shall provide to the NREL Subcontract Administrator advance notice and necessary evidence (including Visa types and expiration dates) that legally sufficient work permits have been obtained from the U.S. Immigration and Naturalization Service. Further, the Subcontractor is responsible to ensure that such permits are properly maintained for any of the Subcontractor's employees (and its lower-tier subcontractors' employees) and their officers and agents who are not U.S. citizens for the duration of subcontract work at NREL operated facilities.
4. After the Subcontractor (and its lower-tier subcontractors) has commenced work under the subcontract, the Subcontractor shall provide to the NREL Subcontract Administrator the same advance notice and necessary evidence (including Visa types and expiration dates) for all subsequently assigned individuals who are not U.S. citizens who will enter onto NREL operated facilities.

D. Access Requirements for all persons.

1. All persons entering NREL operated facilities must display a valid NREL (or DOE) issued identification badge. The Subcontractor is responsible to coordinate badge requirements for entrance onto NREL operated facilities for all the Subcontractor's employees (and lower-tier subcontractors' employees) and their officers and agents to ensure the display and return of all issued badges.
2. The Subcontractor is responsible to coordinate with the NREL Technical Monitor all vehicle parking requirements needed to perform the subcontract work on the NREL operated facilities. Vehicle access by Subcontractors and other visitors to the NREL operated facilities are controlled on a 24-hour, 7-day per week basis.
3. The Subcontractor is cautioned that effective January 1, 2007, the Colorado Revised Statutes (CRS 8-2-122) require employers that transact business in Colorado to comply with employment verification requirements to affirm that the employer has examined the legal work status of newly-hired employees and has retained file copies of the documents required by the Federal Immigration Reform and Control Act (8 USC 1324a).

- E. The Subcontractor shall include this clause, including this paragraph (E), in all lower-tier subcontracts that require entry onto NREL operated facilities.”

Appendix B-4 is modified to delete Clause 28 and replace it with the following:

CLAUSE 28 - AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)

Derived from FAR 52.222-27

(Applies to Construction Subcontracts exceeding \$10,000)

- A. *Definitions.* “Covered area,” as used in this clause, means the geographical area described in the solicitation for this Subcontract.
- “Deputy Assistant Secretary,” as used in this clause, means the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.
- “Employer’s identification number,” as used in this clause, means the Federal Social Security number used on the employer’s quarterly federal tax return, U.S. Treasury Department Form 941.
- “Minority,” as used in this clause, means –
1. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
 2. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);
 3. Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and
 4. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).
- B. If the Subcontractor, or a lower-tier subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this Clause and the Notice containing the goals for minority and female participation stated in the solicitation for this subcontract.
- C. If the Subcontractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Subcontractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Subcontractor or lower-tier subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Subcontractors or lower-tier subcontractors toward a goal in an approved plan does not excuse any Subcontractor’s or lower-tier subcontractor’s failure to make good-faith efforts to achieve the plan’s goals.

- D. The Subcontractor shall implement the affirmative action procedures in paragraph (G)(1) through (G)(16) of this clause. The goals stated in the solicitation for this Subcontract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Subcontractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Subcontractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Subcontractor is expected to make substantially uniform progress toward its goals in each craft.
- E. Neither the terms nor conditions of any collective bargaining agreement, nor the failure by a union with which the Subcontractor has a collective bargaining agreement, to refer minorities or women shall excuse the Subcontractor's obligations under this clause, Executive Order 11246, as amended, or the regulations.
- F. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, the Subcontractor must employ apprentices and trainees during the training period, and the Subcontractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- G. The Subcontractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Subcontractor's compliance with this Clause shall be based upon its effort to achieve maximum results from its actions. The Subcontractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:
1. Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Subcontractor's employees are assigned to work. The Subcontractor, if possible, will assign two or more women to each construction project. The Subcontractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Subcontractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.
 2. Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Subcontractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 3. Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Subcontractor by the union or, if referred back, not employed

by the Subcontractor, this shall be documented in the file, along with whatever additional actions the Subcontractor may have taken.

4. Immediately notify the Deputy Assistant Secretary when the union or unions with which the Subcontractor has a collective bargaining agreement has not referred back to the Subcontractor a minority or woman sent by the Subcontractor, or when the Subcontractor has other information that the union referral process has impeded the Subcontractor's efforts to meet its obligations.
5. Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Subcontractor's employment needs, especially those programs funded or approved by the Department of Labor. The Subcontractor shall provide notice of these programs to the sources compiled under subparagraph (G)(2) of this clause.
6. Disseminate the Subcontractor's equal employment policy by –
 - (i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Subcontractor in meeting its contract obligations;
 - (ii) Including the policy in any policy manual and in collective bargaining agreements;
 - (iii) Publicizing the policy in the company newspaper, annual report, etc.;
 - (iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and
 - (v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.
7. Review, at least annually, the Subcontractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
8. Disseminate the Subcontractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Subcontractors and lower-tier subcontractors with which the Subcontractor does or anticipates doing business.
9. Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Subcontractor's recruitment area and employment needs. Not later than one (1) month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written

notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

10. Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Subcontractor's workforce.
 11. Validate all tests and other selection requirements where required under 41 CFR 60-3.
 12. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.
 13. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Subcontractor's obligations under this Subcontract are being carried out.
 14. Ensure that all facilities and company activities are non-segregated except that separate or single-user rest rooms and necessary changing or sleeping areas shall be provided to assure privacy between the sexes.
 15. Maintain a record of solicitations for lower-tier subcontracts for minority and female construction lower-tier subcontractors and suppliers, including circulation of solicitations to minority and female lower-tier subcontractor associations and other business associations.
 16. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Subcontractor's equal employment policy and affirmative action obligations.
- H. The Subcontractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in paragraph (G)(1) through (G)(16) of this clause. The efforts of a subcontractor association, joint subcontractor-union, subcontractor-community, or similar group of which the Subcontractor is a member and participant may be asserted as fulfilling one or more of its obligations under paragraph (G)(1) through (G)(16) of this clause, provided the Subcontractor:
1. Actively participates in the group;
 2. Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;
 3. Ensures that concrete benefits of the program are reflected in the Subcontractor's minority and female workforce participation;

4. Makes a good-faith effort to meet its individual goals and timetables; and
 5. Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Subcontractor. The obligation to comply is the Subcontractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Subcontractor's noncompliance.
- I. A single goal for minorities and a separate single goal for women shall be established. The Subcontractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Subcontractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.
 - J. The Subcontractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
 - K. The Subcontractor shall not enter into any lower-tier subcontract with any person or firm debarred from Government contracts or subcontracts under Executive Order 11246, as amended.
 - L. The Subcontractor shall carry out such sanctions and penalties for violation of this Clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing lower-tier subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this Clause and Executive Order 11246, as amended.
 - M. The Subcontractor, in fulfilling its obligations under this Clause, shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (G) of this Clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Subcontractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.
 - N. The Subcontractor shall designate a responsible official to –
 1. Monitor all employment-related activity to ensure that the Subcontractor's equal employment policy is being carried out;
 2. Submit reports as may be required by NREL; and
 3. Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an

easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

- O. Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

Appendix B-4 is modified to delete Clause 35 and based on subcontract value, appropriately replace it with one of the two following clauses entitled (1) “Buy American Act – Construction Materials (Jan 2005)” or (2) “Buy American Act – Construction Materials under Trade Agreements (June 2003):

CLAUSE # 35 - BUY AMERICAN ACT–CONSTRUCTION MATERIALS (Jan 2005)

Derived from FAR 52.225-9

(Applies to construction subcontracts valued at less than \$7,407,000)

A. Definitions. As used in this clause--

“Component” means an article, material, or supply incorporated directly into a construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Subcontractor or a lower-tier Subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by NREL/Government are supplies, not construction material.

“Cost of components” means--

1. For components purchased by the Subcontractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
2. For components manufactured by the Subcontractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Domestic construction material” means--

1. An unmanufactured construction material mined or produced in the United States; or
2. A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of

all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

“Foreign construction material” means a construction material other than a domestic construction material.

“United States” means the 50 states, the District of Columbia, and outlying areas.

B. Domestic preference.

1. This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. The Subcontractor shall use only domestic construction material in performing this subcontract, except as provided in paragraphs (B)(2) and (B)(3) of this clause.
2. This requirement does not apply to the construction material or components listed by the NREL Subcontract Administrator as follows: none *[Unless NREL Subcontract Administrator provides a list of applicable excepted materials.]*
3. The NREL Subcontract Administrator may add other foreign construction material to the list in paragraph (B)(2) of this clause if NREL determines that
 - (i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
 - (ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or
 - (iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

C. Request for determination of inapplicability of the Buy American Act.

1.
 - (i) Any Subcontractor request to use foreign construction material in accordance with paragraph (B)(3) of this clause shall include adequate information for NREL’s evaluation of the request, including--
 - a. A description of the foreign and domestic construction materials;
 - b. Unit of measure;
 - c. Quantity;
 - d. Price;
 - e. Time of delivery or availability;
 - f. Location of the construction project;
 - g. Name and address of the proposed supplier; and
 - h. A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (B)(3) of this clause.

- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (D) of this clause.
 - (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).
 - (iv) Any Subcontractor request for a determination submitted after subcontract award shall explain why the Subcontractor could not reasonably foresee the need for such determination and could not have requested the determination before subcontract award. If the Subcontractor does not submit a satisfactory explanation, the NREL Subcontractor Administrator need not make a determination.
2. If NREL determines after subcontract award that an exception to the Buy American Act applies and NREL and the Subcontractor negotiate adequate consideration, the NREL Subcontract Administrator will modify the subcontract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (B)(3)(i) of this clause.
 3. Unless NREL determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

D. Data.

To permit evaluation of requests under paragraph (C) of this clause based on unreasonable cost, the Subcontractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

| Construction material description | Unit of measure | Quantity | Price (dollars) * |
|--|------------------------|-----------------|--------------------------|
| <i>Item 1</i> | | | |
| Foreign construction material | | | |
| Domestic construction material | | | |
| <i>Item 2</i> | | | |
| Foreign construction material | | | |
| Domestic construction material | | | |

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[*Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued)]

**CLAUSE # 35 - BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER
TRADE AGREEMENTS (June 2003)**

Derived from FAR 52.225-11

(Applies to construction subcontracts valued at \$7,407,000 or more)

A. Definitions. As used in this clause--

“Component” means an article, material, or supply incorporated directly into a construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Subcontractor or lower-tier subcontractor for incorporation into the building or work. The term also includes an item brought to the site pre-assembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by NREL are supplies, not construction material.

“Cost of components” means—

1. For components purchased by the Subcontractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

For components manufactured by the Subcontractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

“Designated country” means any of the following countries: Aruba, Austria, Bangladesh, Belgium, Benin, Bhutan, Botswana, Burkina Faso, Burundi, Canada, Cape Verde, Central African Republic, Chad, Comoros, Denmark, Djibouti, Equatorial Guinea, Finland, France, Gambia, Germany, Greece, Guinea, Guinea-Bissau, Haiti, Hong Kong, Iceland, Ireland, Israel, Italy, Japan, Kiribati, Korea-Republic of, Lesotho, Liechtenstein, Luxembourg, Malawi, Maldives, Mali, Mozambique, Nepal, Netherlands, Niger, Norway, Portugal, Rwanda, Sao Tome and Principe, Sierra Leone, Singapore, Somalia, Spain, Sweden, Switzerland, Tanzania U.R., Togo, Tuvalu, Uganda, United Kingdom, Vanuatu, Western Samoa, Yemen.

“Designated country construction material” means a construction material that—

1. Is wholly the growth, product, or manufacture of a designated country; or\
2. In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed.

“Domestic construction material” means—

1. An unmanufactured construction material mined or produced in the United States; or

A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which non-availability determinations have been made are treated as domestic.

“Free Trade Agreement country” means Canada, Chile, Mexico, or Singapore.

“Free Trade Agreement country construction material” means a construction material that—

1. Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or
2. In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

“Foreign construction material” means a construction material other than a domestic construction material.

“United States” means the 50 States, the District of Columbia, and outlying areas.

B. Construction Materials.

1. This Clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. In addition, the NREL Subcontract Administrator has determined that the Trade Agreements Act and Free Trade Agreements (FTAs) apply to this acquisition.

Therefore, the Buy American Act restrictions are waived for designated country and FTA country construction materials.

2. The Subcontractor shall use only domestic, designated country, or FTA country construction material in performing this subcontract, except as provided in paragraphs (B)(3) and (B)(4) of this clause.
3. The requirement in paragraph (B)(2) of this clause does not apply to the construction materials or components listed by NREL as follows: none [*Unless NREL Subcontract Administrator provides a list of applicable excepted materials.*]
4. The NREL Subcontract Administrator may add other foreign construction material to the list in paragraph (B)(3) of this clause if NREL determines that—
 - (i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
 - (ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or
 - (iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

C. Request for determination of inapplicability of the Buy American Act.

1.

- (i) Any Subcontractor request to use foreign construction material in accordance with paragraph (B)(4) of this Clause shall include adequate information for Government evaluation of the request, including—
 - (a) A description of the foreign and domestic construction materials;
 - (b) Unit of measure;
 - (c) Quantity;
 - (d) Price;
 - (e) Time of delivery or availability;
 - (f) Location of the construction project;
 - (g) Name and address of the proposed supplier; and
 - (h) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (B)(3) of this Clause.
- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (D) of this Clause.
- (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).
- (iv) Any Subcontractor request for a determination submitted after subcontract award shall explain why the Subcontractor could not reasonably foresee the need for such determination and could not have requested the determination before subcontract award. If the Subcontractor does not submit a satisfactory explanation, the NREL Subcontract Administrator need not make a determination.

2. If NREL determines after subcontract award that an exception to the Buy American Act applies and the NREL Subcontract Administrator and the Subcontractor negotiate adequate consideration, the NREL Subcontract Administrator will modify the subcontract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (B)(4)(i) of this clause.

3. Unless NREL determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

D. Data. To permit evaluation of requests under paragraph (C) of this Clause based on unreasonable cost, the Subcontractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

| Construction Material Description | Unit of measure | Quantity | Price (dollars) * |
|-----------------------------------|-----------------|----------|-------------------|
| Item 1 | | | |
| Foreign construction material | | | |
| Domestic construction material | | | |
| Item 2 | | | |
| Foreign construction material | | | |
| Domestic construction material | | | |

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[*Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]

E. United States law will apply to resolve any claim of breach of this Subcontract.

- **Appendix B-4 is modified to delete the title and Paragraph A in Clause 41 and replace it with the following:**

Insurance -- Work on a Government Installation (Construction) (JAN 2008)

Derived from FAR 52.228-5

(Applies to all construction subcontracts except design-build subcontracts.)

- A. The Subcontractor shall, at its own expense, provide and maintain during the entire performance period of this Subcontract at least the kinds and minimum amounts of insurance required in this clause.

The U.S. Department of Energy and MRI/NREL, their officers, employees, and agents shall be listed as additional insured in all policies of insurance issued to the Subcontractor in furtherance of performance of work under this subcontract when such listing is appropriate to the type of policy issued.

| Insurance Type | Bodily Injury | | Property Damage |
|---------------------------------|---|---|-----------------|
| | Each Person | Each Occurrence | |
| Workers Compensation | as required by law | as required by law | N/A |
| Employer's Liability | \$1,000,000.00 | \$1,000,000.00 | \$1,000,000.00 |
| Comprehensive General Liability | \$1,000,000.00 | \$1,000,000.00 | \$1,000,000.00 |
| Automobile Liability | \$200,000.00 | \$1,000,000.00 | \$1,000,000.00 |
| "All Risk" Builder's Risk | 100% Structure and material value (Subcontractor responsible for any deductible) | 100% Structure and material value (Subcontractor responsible for any deductible) | |

- **Appendix B-4 is modified to delete Clause 81 and replace with the following:**

CLAUSE 81. ACCESS TO AND OWNERSHIP OF RECORDS (JUL 2005)

Derived from 970.5204-3 (FD)

(Applies to cost type subcontracts when the work is or involves a critical task under NREL's Prime Contract. Applies to all cost type subcontracts exceeding \$2M and all cost type subcontracts where the clause Integration of Environment, Safety, and Health into Work Planning and Execution is applicable.)

- A. Government-owned records. Except as provided in paragraph (B) of this clause, all records acquired or generated by the Subcontractor in its performance of this subcontract shall be the property of the Government and shall be delivered to the Government or otherwise disposed of by the Subcontractor either as the NREL Subcontract Administrator may from time to time direct during the progress of the work or, in any event, as the NREL Subcontract Administrator shall direct upon completion or termination of the subcontract.
- B. Subcontractor-owned records. The following records are considered the property of the Subcontractor and are not within the scope of paragraph (A) of this clause.
 1. Employment-related records (such as worker's compensation files; employee relations records; records on salary and employee benefits; drug testing records; labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, except for

those records described by the subcontract as being maintained in Privacy Act systems of records.

2. Confidential Subcontractor financial information, and correspondence between the Subcontractor and other segments of the Subcontractor located away from the Subcontractor's facility (i.e., the Subcontractor's corporate headquarters);
 3. Records relating to any procurement action by the Subcontractor, except for records that under 48 CFR 970.5232-3, Accounts, Records, and Inspection, are described as the property of the Government; and
 4. Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and
 5. The following categories of records maintained pursuant to the other terms and conditions of this subcontract:
 - (i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.
 - (ii) The Subcontractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.
 - (iii) Patent, copyright, mask work, and trademark application files and related Subcontractor invention disclosures, documents and correspondence, where the Subcontractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.
- C. Subcontract completion or termination. In the event of completion or termination of this subcontract, copies of any of the Subcontractor-owned records identified in paragraph (B) of this clause, upon the request of the Government, shall be delivered to NREL/DOE or its designees, including successor NREL Contractors. Upon delivery, title to such records shall vest in NREL/DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- D. Inspection, copying, and audit of records. All records acquired or generated by the Subcontractor under this subcontract in the possession of the Subcontractor, including those described at paragraph (B) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the Subcontractor shall afford NREL/Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the NREL Subcontract Administrator, the Subcontractor shall deliver such records to a location specified by the NREL Subcontract Administrator for inspection, copying, and audit. NREL/Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.

- E. Applicability. Paragraphs (B), (C), and (D), of this clause apply to all records without regard to the date or origination of such records.
- F. Records retention standards. Special records retention standards, described at DOE Order 200.1, Information Management Program (version in effect on effective date of subcontract), are applicable for the classes of records described therein, whether or not the records are owned by the Government or the Subcontractor. In addition, the Subcontractor shall retain individual radiation exposure records generated in the performance of work under this Subcontract until NREL/DOE authorizes disposal. The Government may waive application of these record retention schedules, if, upon termination or completion of the subcontract, the Government exercises its right under paragraph (C) of this clause to obtain copies and delivery of records described in paragraphs (A) and (B) of this clause.
- G. Lower-tier subcontracts. The Subcontractor shall include the requirements of this clause in all lower-tier subcontracts that are of a cost-reimbursement type if any of the following factors is present:
1. The value of the lower-tier subcontract is greater than \$2 million (unless specifically waived by the NREL Subcontract Administrator);
 2. The NREL Subcontract Administrator determines that the lower-tier subcontract is, or involves, a critical task related to the NREL's Prime Contract; or
 3. The lower-tier subcontract includes 48 CFR 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause."

• **Appendix B-4, Clause 84 is modified as follows:**

CLAUSE 84. ACCOUNTS, RECORDS, AND INSPECTION (DEC 2000) (ALTERNATE I) (DEC 2002) AND (ALTERNATE II) (DEC 2000)

Derived from DEAR 970.5232-3 (FD) is modified to add "(SPECIAL) (FEB 2006)" to the title of the clause and add the following paragraph at the end of the clause, appropriately identified as paragraph (I) when (i) the clause with no Alternate is applicable and (ii) Alternate I is applicable. Appropriately identified as paragraph (J) when Alternate II is applicable.

- “(*). Statement of Cost Incurred and Claimed. At any time during subcontract performance, should the NREL Subcontract Administrator determine that the costs incurred are unallowable to an extent to cause a loss of confidence in the Subcontractor's management controls or the Subcontractor's management systems that validate the costs incurred and claimed, the NREL Subcontract Administrator may, in his or her sole discretion, impose conditions upon the Subcontractor including direction that specific types of cost be claimed by periodic vouchering. In addition, the NREL Subcontract Administrator may direct the Subcontractor to pay the NREL an amount equal to the unallowable costs or payments improperly made and take any other action or combination of actions provided

in this subcontract, at law, or in equity. This action shall not relieve the Subcontractor from any obligation to perform its obligations under this subcontract.”

- **Appendix B-4 is modified to add the following Clause:**

CLAUSE 85. Drug-Free Workplace (MAY 2001)

Derived from FAR 52-223-6 (FD)

(Applies to all subcontracts where work is to be performed on NREL operated facilities, including Government-owned or –leased property.)

A. Definitions. As used in this clause –

“Controlled substance” means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 -- 1308.15.

“Conviction” means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

“Criminal drug statute” means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

“Drug-free workplace” means the NREL-operated site(s) for the performance of work done by the Subcontractor in connection with a specific subcontract where employees of the Subcontractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

“Employee” means an employee of a Subcontractor directly engaged in the performance of work under a NREL subcontract. “Directly engaged” is defined to include all direct cost employees and any other Subcontractor employee who has other than a minimal impact or involvement in subcontract performance.

“Individual” means a Subcontractor that has no more than one employee including the Subcontractor.

- B. The Subcontractor, if other than an individual, shall -- within 30 days after award (unless a longer period is agreed to in writing for subcontracts of 30 days or more performance duration), or as soon as possible for subcontracts of less than 30 days performance duration –
1. Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Subcontractor’s workplace and specifying the actions that will be taken against employees for violations of such prohibition;
 2. Establish an ongoing drug-free awareness program to inform such employees about –
 - (i) The dangers of drug abuse in the workplace;
 - (ii) The Subcontractor’s policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

- (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - 3. Provide all employees engaged in performance of the Subcontract with a copy of the statement required by subparagraph (B)(1) of this clause;
 - 4. Notify such employees in writing in the statement required by subparagraph B (1) of this clause that, as a condition of continued employment on this Subcontract, the employee will --
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;
 - 5. Notify the NREL Subcontract Administrator in writing within 10 days after receiving notice under paragraph (B)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
 - 6. Within 30 days after receiving notice under paragraph (B)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
 - (i) Taking appropriate personnel action against such employee, up to and including termination; or
 - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
 - 7. Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (B)(1) through (B)(6) of this clause.
- C. The Subcontractor, if an individual, agrees by award of the subcontract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this subcontract.
- D. In addition to other remedies available to the NREL and the Government, the Subcontractor's failure to comply with the requirements of paragraph (B) or (C) of this clause may, pursuant to FAR 23.506, render the Subcontractor subject to suspension of subcontract payments, termination of the subcontract or default, and suspension or debarment."

- **Appendix B-4 is modified to add Clause No. 86 as follows:**

“CLAUSE 86 - CHANGES - FIXED PRICE CONSTRUCTION (AUG 1987)

Derived from FAR 52.243-4

(Applies to construction subcontracts.)

- A. The NREL Subcontract Administrator may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the Subcontract, including changes—
 - 1. In the specifications (including drawings and designs);
 - 2. In the method or manner of performance of the work;
 - 3. In the Government-furnished facilities, equipment, materials, services, or site; or
 - 4. Directing acceleration in the performance of the work.
- B. Any other written or oral order (which, as used in this paragraph (B), includes direction, instruction, interpretation, or determination) from the NREL Subcontract Administrator that causes a change shall be treated as a change order under this clause; provided, that the Subcontractor gives the NREL Subcontract Administrator written notice stating—
 - 1. The date, circumstances, and source of the order; and
 - 2. That the Contractor regards the order as a change order.
- C. Except as provided in this clause, no order, statement, or conduct of the NREL Subcontract Administrator shall be treated as a change under this clause or entitle the Subcontractor to an equitable adjustment.
- D. If any change under this clause causes an increase or decrease in the Subcontractor's cost of, or the time required for, the performance of any part of the work under this subcontract, whether or not changed by any such order, the NREL Subcontract Administrator shall make an equitable adjustment and modify the Subcontract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (B) of this clause shall be made for any costs incurred more than twenty (20) days before the Subcontractor gives written notice as required. In the case of defective specifications for which NREL/Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Subcontractor in attempting to comply with the defective specifications.
- E. The Subcontractor must assert its right to an adjustment under this clause within thirty (30) days after—
 - 1. Receipt of a written change order under paragraph (A) of this clause, or

2. The furnishing of a written notice under paragraph (B) of this clause, by submitting to the NREL Subcontract Administrator a written statement describing the general nature and amount of the proposal, unless this period is extended by NREL/Government. The statement of proposal for adjustment may be included in the notice under paragraph (B) above.

F. No proposal by the Subcontractor for an equitable adjustment shall be allowed if asserted after final payment under this Subcontract.”

- **Appendix B-4 is modified add Clause No. 87 as follows:**

“CLAUSE 87 - SUBCONTRACTOR QUALITY REPRESENTATIONS (APRIL 2006)

(Applies to all subcontracts where items or components are to be supplied or delivered in conjunction with services to be performed. Applies to all construction subcontracts).

- A. The Subcontractor represents that: (1) suspect or counterfeit supplies and components and (2) misrepresented parts or items are not provided as part of this subcontract. The Subcontractor further represents that original equipment manufacturer’s parts or factory authorized non-OEM parts will be used for repair or maintenance services as a part of this subcontract.
- B. The Subcontractor represents that the supplies and components are new, including recycled (not new or reconditioned), and are not of such an age or so deteriorated as to impair their usefulness or safety. Furthermore, the Subcontractor shall not furnish any item that is residual inventory resulting from terminated Government contracts/subcontracts or former Government surplus property. All items or components furnished under this procurement action shall comply with the Subcontract terms and specifications.”